

REMARKS

Claims 2-8 stand rejected under 35 U.S.C. § 101, as being directed to non-statutory subject matter. The Office Action states that claims 2-8 lack or are not limited to physical articles or objects which are structurally and functionally interconnected to code in such a manner as to establish a statutory category of invention and enable the code to act as a computer component and realize its functionality. Applicant respectfully traverses the rejection.

35 U.S.C. § 101 provides statutory categories of inventions including processes, machines, manufactures, or compositions of matter, or any new and useful improvement thereof. Independent claims 5 (from which claims 2-4 and 7-8 depend) and 6 clearly fall within at least one of machine, manufacture, and process, as they both define at least a computer-readable medium that causes a computer to monitor a network and change a monitoring policy.

Further, as provided in the USPTO's own "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" ("Guidelines"), a claimed invention that produces a useful, concrete, and tangible result meets the § 101 requirements. In other words, a claimed invention that is useful and accomplishes a practical application (page 4, Guidelines), and not merely an abstract idea, law of nature, or natural phenomena, should not be rejected under §101.

As provided in the Guidelines, to be “useful”, utility must be specific, substantial, and credible. To be “tangible”, the claimed invention need not be tied to a particular machine or apparatus, but must at least set forth a practical application to produce a real-world result; i.e., it must not be merely abstract. Finally, to be a “concrete” result, the process must have a result that is substantially repeatable or must substantially produce the same result again. Claims 2-8 meet all of these requirements.

The Office Action concludes that the claimed invention is directed to non-statutory subject matter solely on the belief that the claims lack physical articles or objects. This fails to set forth a prima facie case of unpatentability, at least because it fails to consider whether the claimed invention produces a useful, concrete, and tangible result. Independent claims 5 and 6 define at least a computer-readable medium storing a program for monitoring activities on a network, which causes a computer to, among other things, monitor a network according to a policy and change the monitoring policy according to a monitoring result. Examples of monitoring a network, as provided on page 5 of the present specification, include monitoring activities of devices on a network and/or links interconnecting them.

A computer-readable medium that causes a computer to, among other things, monitor a network according to a monitoring policy and change the monitoring policy according to a monitoring result, clearly meets the requirement of statutory subject matter, at least because it produces a useful, concrete, and tangible result. The utility of such monitoring and changing is specific, substantial, and credible. Such an invention also clearly

sets forth a practical application to produce a real-world result, and is far from abstract. Finally, such a result certainly would be concrete under the criteria set forth above.

Accordingly, Applicant respectfully submits that claims 2-8 meet the criteria for patentability under 35 U.S.C. § 101, and as set forth under the Guidelines. Applicant thus requests reconsideration and withdrawal of the rejection. If the rejection is maintained, Applicant requests a detailed explanation of how the inventions of claims 2-8 fail to meet the criteria set forth in the Guidelines.

Claims 2-12 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Natarajan. Applicant respectfully traverses the rejection for at least the reason that Natarajan appears neither to teach nor suggest at least monitoring policy changing means for automatically changing a monitoring policy according to a monitoring result reported by monitoring means. Natarajan further appears neither to teach nor suggest at least automatically changing a frequency of monitoring and adding a new object or item to coverage of monitoring when degradation in service level of a network is observed (as in independent claims 5, 9, and 10) or automatically decreasing a frequency of monitoring and withdrawing an existing object or item from coverage of monitoring when improvement in service level of a network is observed (as in independent claims 6, 11, and 12).

The Office Action cites col. 10, lines 41-57, col. 13, lines 45-67, col. 14, lines 1-4, and col. 16, lines 18-38 for the claimed monitoring policy changing means. Col. 10, lines 41-57 disclose monitoring a network and reporting an error to a policy engine 254, but not automatically changing a monitoring policy, as policy engine 254 is for controlling a

network. Col. 13, line 45 – col. 14, line 4 teaches that policy engine 254 effects changes in the network, calculates updated control information relating to various network elements, and performs an application-specific tuning function. However, this section does not teach that monitoring policy is changed. Col. 16, lines 18-38 teaches that policy engine 254 may be dynamically modified to alter the way in which a policy effects control of a network, but, again, does not teach automatically changing a monitoring policy.

Further, Natarajan fails to teach or suggest automatically changing a monitoring policy in the specific ways defined in claims 5, 6, and 9-12. The Office Action cites col. 21, lines 1-27, col. 28, lines 59-67, and col. 33, lines 1-23 for teaching the automatic increasing of monitoring frequency and adding a new object or item to coverage in claims 5, 9, and 10. The Office Action cites the same sections for teaching the automatic decreasing of monitoring frequency and withdrawal of an existing object or item from coverage in claims 6, 11, and 12.

However, the cited sections fail to teach or suggest the claimed features. Col. 21, lines 1-27 teach that a network element waits a specified time interval before re-computing or retrieving updated operating information, and that a network element may continually report updated operating information. This section also teaches that a policy engine makes policy decisions for generating updated network control parameters to effect changes in the network based on network data. In other words, it merely teaches that a policy engine receives information and controls a network. Col. 28, lines 59-67 disclose that a

policy within a policy engine 254 may be modified. As stated above, the policy engine 254 is for a control policy.

Finally, col. 33, lines 1-23 teach linking report service level parameter data to a data store 1652. The parameters are analyzed to determine if the parameters meet or exceed the values or criteria set by a Service Level Agreement. If so, a monitor device 1662 waits a specified time interval before reanalyzing a virtual circuit based on updated service level parameters. The process then repeats (see FIG. 18). This fails to teach or suggest changing a monitoring policy as claimed.

The Office Action appears to recognize that these claim features are not directly disclosed in the cited portions. To compensate, the Office Action states that Natarajan discloses a policy engine for modifying/updating control parameters in which the event handler has detected errors, and that the updated network control parameters affect the change in the network. The Office Action then concludes that, since the changes on the network in Natarajan are based on updating control parameters associated with the network elements, this teaches the specific object adding or removing, and automatic increase or decrease of monitoring frequency claimed.

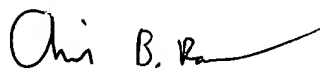
Applicant respectfully traverses this conclusion. The specific claimed features of adding or removing an item to be monitored and increasing or decreasing monitoring frequency are not taught or suggested by the cited sections in Natarajan. Further, these features are neither implied by nor inherent from these sections. Controlling a network by updating control parameters based on monitoring feedback does not necessarily cause a

change in monitoring policy by adding or removing an item to be monitored and by increasing or decreasing monitoring frequency. Network control may change the monitoring results by updating network element parameters (e.g., see FIG. 10 and col. 24, line 42 – col. 25, line 3), and this provides the feedback control in Natarajan. However, this is not the same as automatically changing the monitoring policy, let alone in the specific ways defined in claims 5, 6, and 9-12. Additionally, though Natarajan discloses waiting a specified time interval (for example, see step 809 in FIG. 8, step 1218 in FIG. 12, step 1312 in FIG. 13, step 1518 in FIG. 15, step 1722 in FIG. 17, and step 1810 in FIG. 18), the reference fails to teach or suggest changing the time interval of a waiting step.

For at least these reasons, Applicant respectfully submits that claims 2-12 are allowable over the references of record, including Natarajan. Applicant thus respectfully requests reconsideration and withdrawal of the rejection.

For at least the foregoing reasons, Applicant believes that this case is in condition for allowance, which is respectfully requested. The Examiner should call Applicant's attorney if an interview would expedite prosecution.

Respectfully submitted,
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